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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 1st November, 2006
Date of decision : December 06, **2006**

RFA No. 607/2004

Master Rupank Handa ... Appellant
Through : Mr. V.K. Anand, Advocate

Versus

Vinod Kumar Handa ...Respondents
Through : Mr. I.P. Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? } Yes
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the Digest?

S.L. BHAYANA, J.

1. This appeal arises out of a judgment and decree passed by learned Additional District & Sessions Judge, Delhi dated 12-02-2004 whereby the learned ADJ has dismissed the petition of the appellant.

2. The brief facts as set out in the plaint are that Master Rupank Handa had filed a writ petition before the learned trial court through his mother and natural guardian Smt. Anjali Handa. Rupank Handa was minor at the time of filing of the said petition. He was studying in an English medium school in Delhi. Since there was a matrimonial dispute between his parents, so he was living with his mother Smt. Anjali Handa who was also working as school teacher and was maintaining the petitioner out of her own salary. The petition had been filed by the minor Master Rupank Handa against his father who was working as senior officer with M/s. General Insurance Company Limited, New Delhi. His salary at the relevant time was Rs.18,000/- per month. It is further alleged that the respondent was getting Rs.10,000/- by way of commission from the insurance company. The respondent was also earning a sum of Rs.1,00,000/- annually from his employer on account of incentives. The respondent was also getting rent @ Rs.5,000/- per month as a part of his house was given on rent by the respondent. The total income of the respondent was given as Rs.33,000/- per month by the petitioner. The petitioner had filed petition u/s 20 of the Hindu Adoption & Maintenance Act wherein he had prayed that the respondent

be directed to pay Rs.4,000/- per month to the petitioner as maintenance to meet his expenses on education, health care, etc. which expenses were being met by his mother.

3. The respondent has admitted that he is father of the petitioner. He has also admitted that he is working with M/s. General Insurance Company Limited but he has denied that his monthly salary was Rs.18,000/- per month. He denied that he is getting Rs.5,000/- per month as rent from his house. The respondent has further stated that he is residing in the house of his mother. The respondent has further stated that the respondent had filed a suit for obtaining the custody of the petitioner which was contested by the mother of the petitioner who had undertook to maintain him and she was allowed the custody of the petitioner by the court.

4. On the pleadings of the parties, the trial court framed the following issues :-

1. Whether the plaintiff is entitled to maintenance for petition u/s 20 of the Hindu Adoption & Maintenance Act? If so, at what rate? OPP

2. Whether the present suit is barred by res judicata? OPD

3. Whether the proper court fee has not been affixed on the petition filed by the plaintiff? OPD

4. Whether the present petition is barred by doctrine of latches?

5. Whether the plaintiff has locus standi to file the present petition? OPD

6. Relief.

5. Both the parties were allowed to lead evidence in support of their case. The petitioner examined two witnesses in support of his case while the respondent himself entered into the witness box as RW1 and closed his evidence.

6. After hearing both the parties, the trial court decided issue No.1 against the petitioner and in favour of the respondent. The trial court further held that the petitioner was entitled to maintenance from the respondent. The trial court decided issues No.2, 3, 4 & 5 together. The learned trial court held that although the petitioner has locus standi to file the present petition but the present petition is not maintainable through Anjali Handa, the mother of the petitioner because the respondent is his natural father. Ultimately, the trial court dismissed the suit of the

petitioner.

7. We have heard learned counsel for both the parties and perused the record carefully. Learned counsel for the appellant has submitted that Smt. Anjali Handa has deposed before the court that she is working as PGT since 1996 and her salary is Rs.14,000/- per month. She has no other liability except her son Rupank Handa. She further deposed that her husband is getting around Rs.18,000/- per month and he is also getting Rs.10,000/- per months as commission from his employer. He is also getting incentive from his employer. Her husband is living in his own house. He has no liability. The respondent is also getting Rs.5,000/- as rent from the tenant. The income of the respondent/husband is about Rs.40,000/- to Rs.45,000/- per month. The respondent is paying Rs.500/- per month to her for her child. She is spending Rs.10,000/- per month as maintenance on her child Rupank Handa. Her son is studying in a public school. She has exhibited receipts regarding tuition fees, purchase of clothes, school fees, etc. She wants Rs.4,000/- per month as maintenance for her child Rupank Handa. In the cross-examination, she has admitted that she is getting Rs.14,000/- per month as salary. She has also admitted that she is

residing in the house at West Patel Nagar and her sisters are also helping her. Some body had told her that the tenant is paying Rs.5,000/- per month to the respondent but she does not remember the name of the person who had given this information to her. Learned counsel for the appellant has submitted that the petitioner is pending on the maintenance of her son lot of money which comes to Rs.10,000/- per month and she at least needs Rs.4,000/- per month from the respondent in order to maintain her child. Learned counsel for the appellant further submitted that RW1 Vinod Kumar Handa has also admitted in the examination in chief that he used to draw Rs.25,000/- per month and after all the deductions his carry on salary comes to Rs.13,000/- per months. He has also admitted that he has taken voluntary retirement from the Government job w.e.f. 01-04-03. However, the respondent has denied that he is drawing Rs.15,000/- per month by way of commission. He has also denied that he is receiving Rs.1,00,000/- annually as incentive from his employer. He has also denied that he is getting Rs.5,000/- per month as rent from the tenant. The respondent has also denied that Anjali Handa is spending Rs.10,000/- on maintenance. In fact, no tutuion fee is paid by her as she herself is a teacher and she teaches the child herself.

The petitioner is being maintained by Smt. Anjali Handa on her own commitment to maintain him. The petitioner is being maintained by Anjali Handa properly. Therefore, the petitioner does not need any help from the respondent. He further stated that after his retirement w.e.f. 01-04-03 he is getting Rs.6,000/- per months as pension only. In the cross-examination, the respondent has admitted that he maintains mobile phone on which he spends Rs.1,000/- to Rs.1,200/- per month. He is also maintaining a car and Rs.3,500/- is being spent on the maintenance and running of the car. He has denied the suggestion that the property at Janakpuri belongs to him but it belongs to his parents. He has also admitted that a house was purchased by his mother at Janakpuri but she had purchased this house from the sale proceeds of a house which was sold by her being house No.26/104, West Patel Nagar, New Delhi. He has admitted that he had sold the plot at Janakpuri, Delhi which was gifted to him by his grand mother in the year 1995 for Rs.2,21,000/-. He has further deposed that he is contributing Rs.4,000/- per month for maintenance of this house. Learned counsel for the petitioner has submitted that learned trial court has wrongly dismissed the petition of the petitioner for maintenance. The appellant who is minor son of the

respondent is entitled to receive maintenance from his father under the law and has prayed that the appeal be accepted and the impugned judgment and decree may be set aside and the appellant be awarded maintenance.

8. On the other hand, learned counsel for the respondent submitted that trial court has rightly dismissed the suit of the appellant claiming maintenance from the respondent. The mother of the appellant Smt. Anjali Handa is working as a teacher. She is earning Rs.14,000/- per month. She has got no other liability except to maintain her son. She is getting sufficient salary to maintain the appellant Master Rupank Handa. The learned trial court has rightly dismissed the suit of the appellant. The respondent has got no liability to pay any maintenance to the appellant who is his son. The appeal may be dismissed with costs.

9. We have gone through the statement of PW1 Smt. Anjali Handa. She has stated in her statement before the court that she is maintaining her child Rupank Handa. She is spending Rs.10,000/- per month on the bringing up of her child. Her son is studying in a public school and she has to pay the fees for her son in the public school. She is also spending on the treatment of her child. She is also spending on

the clothes and other requirements of her child. Her son is also taking tuitions for which she is paying money to the teachers. She is also spending money on books, uniform, etc. which is required by her child. She is earning Rs.14,000/- per month. The respondent is earning Rs.19,000/- per month as salary from the General Insurance Company. He is also getting Rs.15,000/- per months as commission from his employer. Besides that, he is also getting rental income from his house @ Rs.5,000/- per month. The respondent who is father of the appellant Rupank Handa should be directed to pay Rs.7,000/- per month as maintenance to the appellant. We have also gone through the cross-examination of the witness. In the cross-examination, she has maintained these facts. We have also gone through the affidavit filed by RW1 Vinod Kumar Handa. He has deposed before the court that his gross salary is Rs.10,000/- per month and after deductions his carry on salary is Rs.13,000/- per month. He has denied that Smt. Anjali Handa is spending Rs.10,000/- on maintenance of the appellant. We have gone through the cross-examination of the witness. He has admitted that he is maintaining a mobile phone and he is spending Rs.1,000/- to Rs.1,200/- per month. He is also maintaining a car and spending

Rs.3,500/- per month on the maintenance of this car. He has also admitted that he is paying Rs.2,500/- per month to the petitioner in the court of MM, Delhi for which the court has ordered to pay Rs.2,500/- per month u/s 125 Cr.P.C. on the petition filed by the petitioner.

10. After going through the evidence of the plaintiff and the respondent, it has become clear that Smt. Anjali Handa, mother of Master Rupank Handa is working as a teacher. She is earning Rs.14,000/- per month. However, she has failed to prove that she is spending Rs.10,000/- per month on the upbringing of her son Rupank Handa by not producing any cogent evidence but it is not denied that she is maintaining her son Rupank Handa from her salary which she is getting as a teacher. It is also common ground that Rupank Handa is studying in a public school and his mother has to spend on the purchase of books, tution fee, uniform and all other day-to-day expenses to be incurred by Master Rupank Handa. Admittedly, the respondent Vinod Kumar Handa who is father of the child Rupank Handa and it is also the duty of the father and the mother both to contribute towards the maintenance of their child Master Rupank Handa. In our opinion, this fact has been ignored by the learned trial court that the respondent who

is father of the child Rupank Handa has a duty to maintain his child. It is not the duty of the mother only to maintain the child but the father is equally responsible to maintain his child. The respondent has admitted that he is earning Rs.20,000/- per month from his employer General Insurance Company. He has also admitted that after deductions his carry home salary is Rs.13,000/- per month. It is also common ground that the learned trial court has awarded interim maintenance @ Rs.2,500/- per month in favour of the appellant and against the respondent. The respondent has admitted that he has been paying regularly interim maintenance to the appellant before the learned trial court when the case was pending there but we don't agree with the finding of the trial court that it is the duty of the mother Smt. Anjali Handa to maintain Rupank Handa and the father/respondent is not liable to pay any maintenance to the appellant.

11. In our opinion, the ends of justice will be served if the appellant is awarded Rs.3,500/- per month as maintenance against the respondent. We, therefore, set aside the impugned judgment and decree passed by the learned trial court in this case. The petition filed by the appellant/petitioner Master Rupank Handa is allowed and the respondent

is directed to pay a sum of Rs.3,500/- per month to the petitioner as maintenance w.e.f. 02-03-98 till 07-09-2004 on which date the child Rupank Handa had attained majority. With these observations, the appeal of the petitioner/appellant is allowed with costs. Trial court record be sent back.

(S.L.BHAYANA)
JUDGE

(T.S. THAKUR)
JUDGE

December 06 , 2006
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